(7)

CF 100/-

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR.

WRIT PETITION NO: 539 OF 2002

PETITIONER: Madhya Pradesh Koyala Mazdoor Sabha (HMS) through its General Secretary, At/PO: South Jhagrakhand Colliery, Dist: Korea, Chhattisgarh.

Versus

RESPONDENTS

(1) The Sub Area Manager, Gevra Project, SECL, PO: Gevra, Dist: Bilaspur.

(2) The General Manager, Korba West Area, SECL, Dist: Bilaspur (M.P)

(3) M/s. Ex Military Enterprises (P) Ltd., PO: Gevra Project, Dist: Bilaspur.

(4) M/s. Rohini Associates (P) Ltd., PO: Gevra Project, Dist: Bilaspur.

(5) M/s. Kaytin Transport (P) Ltd. , PO: Gevra Project, Dist: Bilaspur.

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.2384/95

M/s Kaytin Transport Pvt. Ltd.
Vs.
The Regional Labour Commissioner (Central) & ors.

W.P. No.2526/95

S.E.C.L.
vs.
M.P. Koyla Mazdoor Sangh and others

W.P. No.2626/96

S.E.C.L.
vs.
The Regional Labour Commissioner (C) and another

AND

W.P. No.539/02

M.P. Koyla Mazdoor Sabha
vs.
Sub Area Manager, Gevra Project & ors.

O R D E R

(188)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.2384/95

M/s Kaytin Transport Pvt. Ltd.
Vs.
The Regional Labour Commissioner (Central) & ors.

O R D E R

This common order shall also govern the matters in W.P. No.2526/95 (S.E.C.L. vs. M.P. Koyla Mazdoor Sangh and others), W.P. No.2626/96 (S.E.C.L. vs. The Regional Labour Commissioner (C) and another) and W.P. No.539/02 (M.P. Koyla Mazdoor Sabha vs. Sub Area Manager, Gevra Project & ors).

2. By the present petition, the petitioner's main challenge is to the award dated 25/8/1994 passed by the Arbitrator. It is submitted that an agreement was arrived at for the period 1/3/1983 to 31/8/1988. It is further submitted that the work was commenced at the Gevra Project from December, 1985 and thereafter the contract was terminated on 31/8/1988. Writ petition No.2526/1995 has been filed by the S.E.C.L. against the M.P. Koyla Mazdoor Sangh, Ex.Military Enterprises P. Ltd., M/s Rohini Associates P. Ltd. and M/s Kaytin Transport P. Ltd. and writ petition No.2626/1996 has been filed by the S.E.C.L. against the Regional Labour Commissioner (Central) and M.P. Koyla Mazdoor Sangh. The main relief claimed in W.P.No.2526/1995 is to quash the award and in W.P.No.2626/ 1996 is to quash the order dated 19-6-1996 directing the petitioner to deposit an amount of Rs.1,40,88,945.61P within a period of thirty days from

(189)

the date of the order. In W.P. No.539/02, the relief prayed for is to the extent that the impugned award dated 30/10/2001 passed by the Tribunal be quashed and the workers of the management of SECL be given all consequential benefits.

3. It is contended that the respondent/Union had filed applications under Section 33(C)(2) of the I.D. Act, registered as Case Nos.130/89 to 147/89. It is further contended that there was another case under Section 10 of the I.D. Act by the appropriate Government.

4. Respondent no.4/Union filed a writ petition bearing W.P. No.3548/87. This petition came up for hearing before the Division Bench of the High Court of M.P. and was disposed of vide order dated 16/11/1987. The said order is quoted below:

> *"Shri S.K. Gangele for the petitioners. He is heard on admission.*
> *This petition has been filed by the General Secretary, M.P. Koyala Mazdoor Sangh, and two others, for giving the same pay and emoluments to the workers working with the transporters of the South Eastern Coal-fields Ltd., who were working as contract labourers with the transporters. The petitioners claim to have raised the question for determination of their dispute before the Chief (Central) Labour Commissioner, but no action appears to have been taken. The petitioners have to agitate the matter before Chief Labour Commissioner, as has been held by the Supreme Court in B.II.E.L. Workers Association v. Union of India (A.I.R. 1985 S.C. 409), wherein the Supreme Court held that under the Central Labour (Regulation and Abolition) Act, 1970, no invidious distinction can be made against contract labour. Contract labour is entitled to the same wages, holidays, hours of work and conditions of service, as are applicable to workmen directly employed by the principal employer of the establishment on the same or similar kind of work. If, there is any dispute with regard to the type of work, the dispute*

(190)

has to be decided by the Chief Labour Commissioner (Central).
Accordingly this petition is disposed of with the direction to the Chief Labour Commissioner (Central) to enquire into the question raised by the petitioners as to whether the work done by the workmen of the transporters of the same type of work that is being done by the workmen directly employed by the principal employer".

5. It is pointed out that the case was referred to Chief Labour Commissioner. During the pendency of the matter before the Chief Labour Commissioner, an agreement was arrived at on 29/5/1989, by which the parties agreed to refer the following matter for its adjudication by the Tribunal and the terms of the reference are as under:

"Whether the workers employed by the contractor at Gevra Project are being paid correct wages, if not, to what relief they should be entitled to?"

6. The agreement has entered into on 24.1.1991. The proceedings of the meeting are as under:

"ARBITRATION PROCEEDINGS DATED 24TH JAN,1991 HELD AT GEVRA.

In pursuance of the minutes of the discussions between the management of SECL, MKMS (HMS Union) and the transport contractors of Gevra Project in which an understanding was reached for giving the case pending vide No. 20(32)/87-LS, III before the Chief Labour Commissioner (C) for Arbitration to the undersigned in the following terms of reference:

'After detailed coloration on the subject matter of payment to the workers deployed by the contractors, it was agreed between the parties unit the matter will be referred for the arbitration of Shri R.K. Mehta, General Manager (P&A), SECL, Bilaspur and his decision shall be final and binding on the parties to the above referred matter pending before the Chief Labour Commissioner.'

(191)

Further the union contended that the issue of arbitration is to decide as to "whether the workers deployed by the contractors are entitled for equal payment for similar type of job".

The parties to the said arbitration agreement were intimated vide letter No. SECL/BSP/GM(P&A)/4/90-91/54 dated 9/10.1.91 for hearing in the above case on 24.1.91 at Gevra Project. This has also a reference to the minutes of discussions with Chief Labour Commissioner (C) on dated 11.2.90 at Jabalpur.

M/s Kaytin Transport were also intimated. However, they did not attend the proceedings as they are busy with some other work at New Delhi as intimated by them.

(1) At the outset the management of Korba (West) and the transport contractors and the union were advised to submit the written statement to each other. A copy of which has already been submitted to the Arbitrator.

(2) The Arbitrator made a request to Shri Nathulal Pandey, representing MPKMS (HMS Union) that since this arbitration has bearing on the case pending under Section 33(C)(2) of the ID Act before the CGIT, Jabalpur the same should be withdrawn. Since the matter before the Arbitrator is the same which is being agitated under said Section of ID Act before CGIT-Cum Labour Court, Jabalpur the above decision was accepted and agreed to by the union.

(3) During the arbitration proceedings the union has submitted the list of workers contractor-wise showing the nature of work category, payment made by the contractor and the payment to be made under law/NCWA III/IV before the Arbitrator. The Arbitrator has given by the copy on date of the same to the contractors and the management of Korba (W) area for their verification and for submitting the details/rejoinder.

(4) The Union and the transport contractors and the management were advised that after receiving the written statement by the concerned parties rejoinder should be given by them with a copy to the Arbitrator and for that the concerned parties/union were given 15 days time i.e. upto

(192)

10th Feb.91. M/s Kaytin Transport Co., who are not present in the today's proceedings they would also submit the rejoinder.

(5) The representative of the Union and the management and the transport contractors were asked to submit the details pertaining to the case in writing to the Arbitrator with a copy alongwith the rejoinder to other parties.

(6) After hearing both the parties it was decided that the management of Korba (West) shall give the details in writing with regards to the commencement of the contract/termination of the contract of the following contractors.

(1) M/s Rohini Associates Pvt. Ltd.
(2) Ex-Military Enterprises.
(3) Kaytin Transport.

The above information is required to be submitted to the Arbitrator within a period of 15 days.

(7) In view of the above the parties agreed that the matter should not be agitated before the Chief Labour Commissioner for which the minutes of to-day's proceedings/discussions would be sent to CLC.

The next date for arbitration is fixed on 28th Feb. 1991 at Bilaspur as requested by the parties."

7. It is pertinent to mention that an agreement dated 29/5/1989 had also taken place before the Chief Labour Commissioner, New Delhi, in August, 1988 and on 27th February, 1989 and 29th May, 1989, which is as under:

"In pursuance of the discussions held before the Chief Labour Commissioner (Central), New Delhi, in August, 1988 and on 27th February, 1989 pertaining to the rates of payment being paid by the Transport Contractors at Gevra Project, the matter was further discussed on 29th May, 1989.

After detailed deliberation on the subject matter of payment to the workers deployed by the Contractors, it was agreed between the parties that the matter will be referred for the Arbitration

(193)

of Shri R.K. Mehta, General Manager (P&A), SECL, Bilaspur, and his decision shall be final and binding on the parties to the above referred matter pending before the Chief Labour Commissioner".

8. On 9/1/1991 the Arbitrator directed the management to submit the following details:

(a) Number of persons involved contractor-wise;

(b) The amount being paid, category-wise to the contractual workers;

(c) Attendance year-wise in respect of each of the persons involved;

(d) Wages claimed, category-wise.

Annexure-A/1 in W.P. No.2526/95 is the copy of notice issued by the Arbitrator.

9. On 8/4/1991, the Arbitrator asked for the parties to submit the relevant papers. Since the relevant documents required for the deliberations have not been received, it was decided that another date, which will be final, will be fixed. Annexure-A/3 in W.P. No.2526/95 is the copy of minutes of the meeting held on 8/4/1991.

10. On 6/11/1991, the Arbitrator again directed the Contractors to produce necessary documents. Annexure-A/4 in W.P. No.2526/95 is the copy of minutes of the meeting held on 6/11/1991. Certain proceedings were drawn, however, it was on 25/8/1994 the Arbitrator passed the award by holding that the persons employed by the Contractors i.e. Drivers, Helpers, Electricians, Mechanics, Type fitter, Welder, etc. are entitled to

(194)

similar wages as being paid to the employees employed by the S.E.C.L. on the same job or designation. The list of workers, which was signed by the Arbitrator, is annexed as Annexure-R/9 in W.P. No.2384/95. The penultimate para of the award is as under:

> *"I, therefore, give my award as follows:*
> *That the persons employed by the above Contractors as per the list submitted by the Union are entitled to Wages as per NCWA.*
> *The Contractor is liable to pay this amount to the workers. The management of SECL, is entitled to make the amount good by recovery from the Bills of the Contractor for making the difference of payment to such of the Contractor workers for the period they had worked with the said Contractors."*

Thereafter, this award was forwarded to the Regional Labour Commissioner for enforcement. On 21/10/1994 (Annexrue-R/8 in W.P. No.2384/95), the Director (Personnel) forwarded the award to Chief General Manager, Gevra Area, for taking action and it was directed that the copy of the same should be given to the three Transport Contractors. On 8/3/1995, it was directed that the amount be deposited.

11. Writ Petition No.2526/95 was filed by the S.E.C.L. on 22/7/1995 against the award. Thereafter, another Writ Petition No.2626/96 was filed by the S.E.C.L. on 8/7/1996. The Regional Labour Commissioner (Central), Jabalpur forwarded the order to the Director (P), SECL, the Chief General Manager, SECL, and N.L. Pandey, General Secretary, MPKMS. Certain objections were raised that it is not enforceable. This award was considered by the Regional Labour Commissioner and after noticing the fact, it was held as under:

(195)

"I have enough discussed comments/counter comments of applicant and non-applicant. From the above discussions, it is clear that on direction from High Court, Jabalpur, CLC (C), New Delhi was hearing on the matter whether nature of work carried by transport employees engaged by contractors is same or similar to the work carried by regular employees employed by Principal employer i.e. SECL. Hearing was in progress and with a view to expedite the matter both parties agreed to refer the matter to Shri R.K. Mehta for deciding the issues pending with the CLC (C), New Delhi. The said arbitration was accepted outside Section 10A of I.D. Act by way of mutual agreement and got it converted into settlement by getting it registered with the CLC (C), New Delhi. Since the arbitration was accepted outside Section 10A of the I.D. Act, the same was not forwarded to Ministry for publication. Management did not object at any place that the agreement should be signed in proper prescribed proforma and is to be published under Section 10A (3). After signing the said settlement on very first proceeding before the arbitrator, applicant Union was persuaded to withdraw all cases pending before labour court and filed the copy of minutes before the CLC (C), New Delhi with a view not to agitate on the matter pending before him. CLC (C), New Delhi accepted and disposed of the application accordingly. Both the parties appeared before arbitrator and after a long hearings Shri R.K. Mehta gave his award. The award was circulated by the management and it was forwarded to all the contractors. Arbitration accepted outside Section 10A of I.D. Act by way of mutual settlement is also binding as accepted by the parties and any amount payable under such settlement can be recovered under Section 33(C) (1) of I.D. Act.

The applicant (Union) has submitted detailed calculation of amount payable to workmen and to be recovered but the non-applicant (management) did not submit any comment on the said calculations hence the calculation submitted by the applicant is accepted for Rs.1,40,88,945.61 payable to Shri Bhagirathi Yadav and 159 others. However, before issue of RRC, I direct the non-applicant i.e. management of SECL, Gevra Area, Gevra, Dist. Bilaspur (M.P.) to deposit the said amount i.e. Rs.1,40,88,946/- (Rupees One crore forty lacs eighty eight thousand nine hundred forty six only) with this office within 30 days from the date of issue of this order."

(196)

12. The aforesaid direction was challenged in W.P. No.2626/96 and the prayer is to the effect that the impugned order, Annexure-P/1,directing the petitioner to deposit an amount of Rs.1,40,88,945.61P within a period of 30 days from the date of the order, be quashed, by issuance of a writ in the nature of certiorari.

13. W.P. No.2626/96 came up for hearing before the High Court of M.P. on 19/7/1996. The High Court passed the interim order directing deposit of 50% of the amount under the orders of R.L.C.

14. The Union filed application for vacating the stay. The matter came up for hearing on 30/7/1996 and the High Court of M.P. passed the order. This order was challenged before the Hon. Supreme Court by the Union. The Hon. Supreme Court passed the order dated 28/2/1997, the relevant portion thereof reads as under:

> *"The remaining 50% of the amount under the award shall be disbursed to the workmen concerned on their providing surety/security of any regular employee of the respondent or any other security, for making good the payment in the event they fail in the writ petition. The said security/surety shall be furnished to the satisfaction of the R.L.C., Jabalpur, after notice to the respondents. The workman as well as the person furnishing the surety/security shall be properly identified before the R.L.C. by the appellant.*
> *With the aforesaid modification in the order dated 30/7/1996, the appeal is disposed of. No costs."*

15. An I.A. No.1/97 was filed by the Management for clarification of the order dated 28/2/1997 and the Hon. Supreme Court passed the order dated 9/5/1997, the relevant portion thereof reads as under:

(197)

"After hearing the learned counsel for the parties, we are of the opinion that there is no ambiguity in the order dated 28/2/1997. However, for implementing the order, the following agreed procedure may be followed for disbursement of the dues:

1. *The whole procedure of distribution of the amount dues will be videographed so as to include the worker receiving the amount as well as the surety. This will be done at the cost of the management.*
2. *Those of the workmen and sureties who are ex servicemen will be identified by the production of their discharge certificates.*
3. *Those of the workmen and sureties who are drivers will produce their driving licences for the purpose of identification.*
4. *In case of dispute regarding the identification of other workmen and sureties they would have to be identified by the Regional Labour Commissioner, who is a competent authority under the Contract Labour Act.*
5. *It is made clear that the security will be furnished as per the order of this court and will be other than a charge on the Provident Fund of the 'regular employee'.*
6. *The management shall be at liberty to inform the Contractors regarding the disbursement. The absence of the Contractors at the time of disbursement shall, however, not keep on hold the disbursement proceedings."*

We hope that the disbursement of the amounts shall be effected expeditiously and the Regional Labour Commissioner shall, as far as possible, complete the process within six weeks.
I.A. No.1 of 1997 is accordingly disposed of."

16. Pursuant to the directions of the Hon. Supreme Court, the Regional Labour Commissioner complied the order and submitted the report to the Registrar General of Supreme Court. The compliance report is dated 6/10/1997 (Annexure-R/2(2) in W.P. No.2626/96).

17. During the pendency of the proceedings in these petitions, on 27/4/2004 learned counsel for Union submitted that the SECL has recovered the amount from some of the Contractor. It was also

(198)

submitted that receipts thereof have been filed in W.P. No.2626/96. This Court passed the order that if the amount has already been recovered, then there should be no difficulty. Learned counsel for S.E.C.L. sought time to seek instructions and file affidavit of Chairman-cum-Managing Director. The affidavit was filed on 10/5/2004 in W.P. No.2526/05 by Shri M.K. Thapar, Chairman-cum-Managing Director and the Chairman has categorically stated that the amount of Rs. 20,14,204/-has been recovered from M/s K.T.P. Ltd. and the amount of Rs.63,90,369/- has been recovered from M/s R.A.P. Ltd. It is also stated in the affidavit that the amount of Rs.46,84,373.36P could not be recovered from Ex Military Enterprises Pvt. Ltd., as the Company had left the area and the whereabouts have not been traceable.

18. Paragraphs 2,6,8 and 9 of the affidavit sworn by the Chairman-cum-Managing Director is pertinent and is quoted below:

> *"2. That, by the instant petition, S.E.C.L. has challenged award dated 25.08.1994 passed by the sole arbitrator Shri R.K. Mehta. The Hon'ble Court of M.P. vide order dated 14/05/96 directed the petitioner to make payment of 75% of arrears as per the award to the workers, accordingly R.L.C. (C) Jabalpur, vide order dated 19/6/1996 directed management of Gevra area to deposit a sum of Rs.1,40,83,946=00 in this office within 30 days of this order.*
>
> *6. That, in compliance of the order of the Hon'ble Apex Court the amount deposited by the petitioner has been disbursed under the supervision of R.L.C. (C). Out of 160 employees, 136 were identified and accordingly cheques for amount of Rs.66,48,355=00 has been disbursed to them and the remaining 24 cheques amount to Rs.7,15,758=12 has been*

(199)

returned. The disbursement was done from 28/5/97 to 30/5/97, 19/6/97 to 26/6/97, 21/8/97 and 8/9/97 at Bilaspur and Jabalpur.

8. That, by the impugned award the arbitrator has fixed the liabilities of the three contractors as under:

i) M/s K.T.P. Ltd. Rs.30,14,203=56

ii) M/s Ex Military Enterprises (P) Ltd. Rs.46,84,373=36

iii) M/s R.A.P. Ltd. Rs.63,90,368=69

Total Rs.1,40,88,945=61

As per the award, the contractors are liable to pay the amount to workers and the management of S.E.C.L. is entitled to make the amount good by recovery from the bills of the contractors for making the difference of payment to such of the contractor workers for the period they have worked with the said contractors.

9. That, the S.E.C.L. Management has withheld the following sums against the payments made/deposited by S.E.C.L. towards the liability of the contractors.

i) M/s K.T.P. Ltd. Rs.10,00,000=00 from Kusmunda Area, and remaining 20,14,204=00 from Hasdeo Area from their sister concern.

ii) M/s R.A.P. Ltd. Rs.63,90,369=00."

19. M/s R.A.P. Ltd. and Ex Military Enterprises Pvt. Ltd. have not filed any writ petition, only M/s Kaytin Transport Pvt. Ltd. has filed the writ petition bearing No.2384/95.

20. During the course of hearing, cases were listed on various dates. On some dates, learned counsel tried their best to get the matter settled but they could not settle and contended that the same be decided on merits accordingly. It is recorded.

21. The contention raised by Shri Ali Asgar, learned counsel on behalf of M/s Kaytin Transport Pvt. Ltd. is that the competent authority to decide the matter was Chief Labour Commissioner and

not the Arbitrator. He further submitted that the Arbitrator had no jurisdiction. For this, reliance has been placed upon the judgment of the Apex Court in the case of ***Deenanath and others vs. National Fertilizers and others*** reported in ***AIR 1992 SC 457 (Para 22)***. ***Para 22*** of the judgment in the case reported in ***AIR 1992 SC 457*** reads as under:

> *"22. It is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the Government after considering the matter, as required to be considered under Section 10 of the Act. The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act. We are thus of the firm view that in proceedings under Article 226 of the Constitution merely because contractor or the employer had violated any provision of the Act or the rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. We would not like to express any view on the decision of the Karnataka High Court or of the Gujarat High Court (supra) since these decisions are under challenge in this Court, but we would place on record that we do not agree with the aforequoted observations of the Madras High Court about the effect of non-registration of the principal employer or the non-licensing of the labour contractor nor with the view of Bombay High Court in the aforesaid case. We are of the view that the decisions of the Kerala High Court and Delhi High Court are correct and we approve the same."*

It is submitted that assuming this Court finds that the Arbitrator had jurisdiction, then he had exceeded the jurisdiction. It is further submitted that even though the parties agreed before the Chief Labour Commissioner, New Delhi, yet the provisions contained in sub-section (3) of Section 10-A of the I.D. Act ought to

(201)

have been followed. This contention in the opinion of this Court has no force.

22. Dr. Shukla, learned counsel for the SECL, also state that matter ought to have been decided by the Chief Labour Commissioner and not the Arbitrator. This contention is being raised too belatedly and even otherwise has no force.

23. Dr. Shukla and Shri Ali Asgar submitted that because of lack of publication of the agreement and award in the official gazette, the proceedings are vitiated. They also submit that the publication is mandatory. Reliance has been placed upon the Full Bench judgment of Madras High Court in the case of ***Krishnaveni Transporters Vs. Special Deputy Commissioner Labour*** reported in ***AIR 1990 Madras 29*** and the Division Bench judgment of the High Court of M.P. in the case of ***K.P. Singh Vs. S.K. Gokhale*** reported in ***1968 MPLJ 890***. Para 11 of the judgment in **K.P. Singh** (supra) reads as under:

> *"11. The next question is as to whether the award of the Arbitrator would be vitiated due to the failure to follow the procedure prescribed by the different sub sections of Section 10-A of the Act. In this connection we may observe that Section 11 of the Act prescribes the procedure to be followed by a Conciliation Officer, the Board, the Court or the Tribunal but leaves the Arbitrator to follow his own procedure. That is certainly in consonance with the principles of arbitration and the only responsibility on the Arbitrator is to act in consonance with the principles of natural justice and he can evolve his own procedure in accordance with those principles. But in order that he may be able to proceed with the adjudication of the points of dispute for arbitration, certain procedure has been prescribed by Section 10-A which as is clear from the wording, powers on parties to enter into an arbitration agreement. But once such an agreement is entered into it is incumbent on the parties to make the agreement in the prescribed form and to forward a copy of the arbitration agreement*

(202)

to the appropriate Government, on receipt of which the appropriate Government is required to publish the same in the official Gazette. It means that all parties interested in the dispute should have notice of reference of the dispute to arbitration and such of them might represent their view point before the Arbitrator as may choose. The procedure to be followed under sub section (3-A) is directory and the Government is required to adopt it, if it wants to make the award binding on the parties or persons who have not joined the reference to arbitration. But sub-section (4) positively lays down that the award has to be submitted to the appropriate Government. The mandatory provisions as prescribed by sub-section (3) and sub-section (4) of Section 10 A of the Act, not having been followed, the machinery for enforcement of the award would not be available to the parties."

In the case in hand, the matter was pending before the Chief Labour Commissioner and it is the Chief Labour Commissioner who referred the matter for arbitration, as such the question of referring the matter by Arbitrator did not arise.

24. At the last stage of arguments, Dr. Shukla raised a question as to whether a reference to Arbitrator could be made after making reference to the CGIT under Section 10 of the Act. It is contended that the reference to CGIT was made on 20-11-1987. The argument is that after reference to CGIT, it is the CGIT, which has the jurisdiction and not the Chief Labour Commissioner.

25. The aforesaid question was not raised at all before the Chief Labour Commissioner. Not only this, the parties participated; then they agreed to refer the matter to the Arbitrator. Pursuant to the proceedings that the Union's representative filed the petition before the Labour Court, they withdrew it. For the said reasons, in the opinion of this Court, the argument raised deserves to be and is accordingly rejected.

(203)

26. Learned counsel for SECL and M/s Kaytin Transport referred to Section 10-A of the Industrial Disputes Act. Section 10-A of Industrial Disputes Act refers to dispute for arbitration, which is pertinent and quoted below:

> *"10-A. Voluntary reference of disputes to arbitration. _ (1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court or Tribunal of National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.*
> *(1A) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.*
> *(2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.*
> *(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within (one month) from the date of the receipt of such copy, publish the same in the Official Gazette.*
> *(3A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of*

(204)

presenting their case before the arbitrator or arbitrators.
(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.
(4A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3A), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.
(5) Nothing in the Arbitration Act, 1940, shall apply to arbitration under this section".

It is noted that pursuant to the order of the High Court, the matter has been referred to the Chief Labour Commissioner. It is further noted that the Chief Labour Commissioner had to decide it and at no point of time the objection was raised and the parties in fact submitted before the Chief Labour Commissioner. Before the Chief Labour Commissioner (Central) in five or six sittings, which have been attended by the parties, all persons agreed in August, 1988, on 27-2-1989 and on 29-5-1989 that the matter be referred to the Arbitrator and such all had notice and no grievance is made by any party that it had no opportunity or knowledge, as all which has taken place is recorded in the order sheets.

27. Learned counsel for Union referred to the order of the Government of India, Ministry of Labour, and Office of the Chief Labour Commissioner (C), New Delhi (Annexure–P/6C in W.P.No.2526/1995), which reads as under:

"1. Madhya Pradesh Koyla Mazdoor Sabha had raised a dispute in 1987 under Rule 25(2) (v) (a) of Contract Labour (R&A) Central Rules, 1971 before the undersigned in respect of contract labour of Gevra Project of

(205)

South-Eastern Coalfields Ltd., Korba. Since there was a dispute, the enquiry had been initiated. However, when the enquiry proceedings were in process, the contractor Rohini Associates Pvt.Ltd. vide letter dated 8-11-89 informed that the General Secretary, M.P. Koyla Mazdoor Sabha had agreed to resolve this dispute through the arbitration. The contractor had sent a copy of the arbitration agreement also. In the arbitration agreement, Shri R.K. Mehta, Manager (Personnel) South-Eastern Coalfields Ltd., Bilaspur was appointed as Arbitrator. The arbitration proceedings are still in process.

2. In the arbitration proceedings on 24th January, 1991 held at Gevra, the parties of the arbitration agreement including the General Secretary, M.P. Koyla Mazadoor Sabha agreed that the matter should not be agitated before the CLC. The proceedings dated 24th Jan. 1991 has been received from the Arbitrator Shri R.K. Mehta vide his letter dated 30th January, 1991.

3. Para 7 of the proceedings reads as under :In view of the above, the parties agreed that the matter should not be agitated before the Chief Labour Commissioner for which the minutes of today's proceedings/discussions could be sent to C.L.C."

4. The above request of the applicant is accepted. The application of General secretary, M.P. Koyla Mazdoor Sabha dated nil received in 1987 for an enquiry under Rule 25 (2)(v) (a) of CL (R&A) Central Rules, 1971 is treated as disposed of an the matter is treated as closed.

Copy to :-
Personnel Manager (IR), SECL :
For information :

Sd/-
(Shambhu Dayal)
Chief Labour Commissioner (Central)

GM (P&A), SECL
Copy to : 1) General Secretary, M.P. Koyla Mazdoor Sabha, South Jharkhand Colliery, Dist Sarguja M.P..
2) Shri R.K. Mehta, General Manager (P&A), South Eastern Coalfields Ltd., Bilaspur, M.P.
3) Rohini Associates Pvt. Ltd., P.O. Gevra Project, Distt. Bilaspur M.P."

(206)

28. Learned counsel submitted that when the matter was before the Arbitrator on 24-1-1991, the Arbitrator made a request to Shri Nathulal Pandey, representing MPKMS (HMS Union) that since this arbitration has bearing on the case pending under Section 33 (C)(2) of the ID Act before the CGIT, Jabalpur, the same should be withdrawn. Since the matter before the Arbitrator is the same, which is being agitated under said Section of I.D. Act before CGIT-cum-Labour Court, Jabalpur the above decision was accepted and agreed to by the Union. The proceeding was attended by Shri H.P. Singh, Shri R.D. Datta, Shri A.K. Gopalan and Shri Nathulal Pandey. The Arbitrator noted that in view of the above the parties agreed that the matter should not be agitated before the Chief Labour Commissioner for which the minutes of today's proceedings/discussions would be sent to Chief Labour Commissioner. It is on this the C.L.C. closed the proceedings.

29. Now the contention on behalf of the Union is that by the aforesaid agreement, the proceedings before the Arbitrator continued and none raised objection to his jurisdiction, even the arbitration proceedings were never challenged till the award is passed. It is submitted that it is only after the award is passed, W.P.No.2384/1995 has been filed by M/s Kaytin Transport Pvt. Ltd. and W.P.Nos. 2526/1995 and 2626/1996 have been filed by the S.E.C.L.

30. The question vehemently urged is about non-publication of terms of reference in the gazette of India as required under Section 10-A of the I.D. Act.

(207)

31. Learned Counsel for the Union submitted that under the facts and circumstances, firstly it is not required and even otherwise it is not fatal one so as to set aside the arbitration award, at the most it is said that non-publication is an irregularity. It is submitted that the contractors did not challenge the jurisdiction of the Arbitrator during the whole proceedings. They submitted into the jurisdiction of the Arbitrator and they did not raise the point that reference has not been published in the gazette. They equally participated and in fact succeeded in withdrawing the application filed by Mazdoor Sabha under Section 33 (C) (2) and subsequently the proceeding under Rule 25 (2) (v) (a) & (b) of the Contract Labour (Regulation & Abolition) Central Rules, 1971 before the Chief Labour Commissioner, New Delhi, which was initiated on the direction of the High Court. It is contended that they have acquiesced the proceedings. It is further contended that the agreement was entered into during the proceedings continuing before the Chief Labour Commissioner, it would therefore, amount to a settlement as per Section 2 (p) of the I.D. Act.

32. Section 2 (p) of the I.D. Act is relevant which reads as under :

> *"2. Definitions – In this Act, unless there is anything repugnant in the subject or context -*
>
> *(p) 'settlement' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to*

(208)

an officer authorised in this behalf by the appropriate Government and the conciliation officer."

33. Learned counsel for the Union submitted that the Officer authorised in this behalf is Chief Labour Commissioner and it is just before him the agreement was arrived at. Learned counsel placed reliance upon the judgments of the Apex Court in the cases of ***Suneeta Aggarwal Vs. State of Haryana & Others (2000) 2 SCC 615 (Para 4), Sohan Singh and others Vs. General Manager, Ordinance Factory (1984) Supl-SCC 661 (Para 2), Prasun Roy Vs. The Calcutta Metropolitan Development Authority (AIR 1988 SC 205) Paras 6, 8 & 10, M/s Neelkantan and Bros. Construction Vs. Superintending Engineer, National Highways, Salem & Others (AIR 1988 SC 2045) Para 2, N. Chellappan Vs. Secretary, Kerala State Electricity Board (1975) 1 SCC 289 Para 7, Chandra Prakash Tiwari Vs. Shakuntala Shukla (2002) 6 SCC 127 Paras 32, 34, 39 and 41, Smt. Ratni Devi Vs. Chief Commissioner, Delhi (AIR 1975 SC 1699) Para 12, Messrs. Pannalal Binraj and others Vs. Union of India and others (AIR 1957 SC 397) Para 45*** and ***Rukmini Amma Saradamma Vs. Kallyani Sulochana and others (AIR 1993 SC 1616) Para 22.***

34. Learned counsel for the Union further submitted that by their conduct the contractors are disentitled for any relief under Article 226 of the Constitution of India. It is contended that the petitioners in W.P.No.2384/1995 and the S.E.C.L. are not entitled for any relief under Article 226 of the Constitution on the ground

that the party must come with clean hands. It is further contended that they succeeded in withdrawing the application filed under Section 33 (C) (2) and so also the proceedings under Rule 25 (2) (v) (a) & (v) of the Contract Labour (Regulation & Abolition) Central Rules, 1971 and that position cannot be restored now. For the reliance has been placed upon the judgments of the Apex Court in the cases of ***Union Carbide Corporation Vs. Union of India (AIR 1992 SC 294 & 295) Paras 72 & 76*** and ***Maharashtra State Road Transport Corpn. Vs. Balwant Regular Motor Service, Amravati (AIR 1969 SC 329) Para 11***. Para 11 of the judgment in **Maharashtra State Road Transport Corporation(supra)** reads as under:

> *"11. In any event, we are satisfied that it is not open to the private operators including respondent No.1 to apply for a writ in the nature of certiorari for quashing the order of the R.T.A. dated September 10/11, 1965 in view of their conduct. It is not disputed that the private operators including respondent No.1 were present in the meeting of the R.T.A. held on September 10/11, 1965 either personally or through duly appointed counsel. Respondent No.1 and the other private operators assured the R.T.A. at the hearing that they would withdraw the writ petitions pending in the High Court. On such assurances and subject to the actual withdrawal of the writ petitions in terms of the assurance, the R.T.A. considered the matter in the said meeting and after hearing the parties, made an order giving effect to the compromise. It is obvious that the private operators including respondent No.1 were parties to the order dated September 10/11, 1965, had accepted that order, acted upon it and derived benefits and advantages from it for nearly one year and 9 months. But for the said order which suspended the operation of the permit of the appellant till July 1, 1967 the private operators including respondent No.1 could not have got temporary permits to operate on the same routes as no stage carriage permits could be issued under Section 62 of the Act during the subsistence of substantive permits. In these circumstances we consider*

(910)

that there was such acquiescence in the R.T.A.'s order dated September 10/11, 1965 on the part of respondent No.1 and other private operators as to disentitle them to a grant of a writ under Article 226 of the Constitution. It is well established that the writ of certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, similar to though not identical with the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp, (1874) 5 PC 221 at p.239 as follows:

'Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.'

This passage was cited with approval by this Court in a recent case – The Moon Mills Ltd. v. M.R. Mehra, President, Industrial Court, Bombay, AIR 1967 SC 1450. In our opinion, the principle of this decision applies to the present case and since respondent No.1 and the other private operators had not even pleaded any circumstances justifying the delay or their conduct, the High Court was in error in granting a writ of certiorari in their favour."

It is also contended that in a matter like this when a settlement has arrived at, the Hon'ble Supreme Court has declined to grant interim relief merely on technical ground. Reliance is also placed upon the judgments of the Apex Court in the cases of **VST**

(911)

Industries Ltd. Vs. VST Industries Workers' Union and another (2001) 1 SCC 298 Para 11, Narpat Singh and others Vs. Jaipur Development Authority and another (2002) 4 SCC 666 para 10 and ***Maharaj Chintamani Saran Nath Shahdeo Vs. State of Bihar and others (1999) 8 SCC 26 Paras 11, 15 and 38***.

35. Learned counsel also contended that the entire facts and circumstances of the case are before the Court and while exercising jurisdiction under Article 226 of the Constitution of India all those factors can be taken into consideration. Reliance is placed upon the judgment of Apex Court in the case of ***Shangrila Food Products Ltd. and another Vs. Life Insurance Corpn. Of India and another (AIR 1996 SC 2410)***. Counsel referred to para 11 of the said judgment, which reads as under:

> *"11. It is well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of enquiry. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can taken into account the unfair advantage gained and can require the part to shed the unfair gain before granting relief."*

36. Learned counsel further contended that arbitration award is against three contractors, namely, M/s Kaytin Transport Pvt. Ltd., M/s Ex Military Enterprises Pvt. Ltd. and M/s Rohini Associates Pvt. Ltd. and only M/s Kaytin Transport Pvt. Ltd. has filed the writ

(212)

petition before this Court and the other two contractors have not filed any petition challenging the award and the award against them has become final. It is submitted that the amount is to be paid on the principle of finality of the judgment. For this, reliance is placed upon the judgments of the Apex Court in the cases of ***Kamal Tanan vs. M.L. Vasishta (2001)9 SCC 263 Para 6,K.K. Verma vs. State of J&K and others (2002) 10 SCC 406 Para 3, Md.Aziz Alam and others vs. Union of India (2001)10 SCC 93 Para 2 and Postgraduate Institute of Medical Education and Research and another vs. A.P. Wasan and others (2003) 5 SCC 321 Para 27.***

37. The other question is whether the workers are doing same and similar job and they are entitled for same and similar wages? The Arbitrator has held that they are doing the same for their identity. Learned counsel placed reliance upon the judgment of the Apex Court in the case of ***M/s Mackinnon Machenzie and Co. Ltd. Vs. Audrey D' Costa and another*** reported in ***AIR 1987 SC 1281 (Para 7)***. Para 7 of the said judgment reads as under:

> *"7. The point which arises for consideration in this petition is whether the respondent no.1 is entitled to any relief within the scope of section 4 of the Act. In order to grant such relief under section 4 of the Act the employee should establish that the remuneration paid by the employer, whether payable in cash or kind, is being paid at rates less favourable than those at which remuneration is paid by him to the employees of the opposite sex in such establishment for performing the same work or work of a similar nature. Whether a particular work is same or similar in nature as another work can be determined on three considerations. In deciding whether the work is the same or broadly similar, the Authority should take a broad view; next, in ascertaining whether any differences are of practical*

(23)

importance, the Authority should take any equally broad approach for the very concept of similar work implies differences in details, but these should not defeat a claim for equality on trivial grounds. It should look at the duties actually performed, not those theoretically possible. In making comparison the Authority should look at the duties generally performed by men and women. Where however both men and women work at inconvenient times, there is no requirement that all those who work e.g. at night shall be paid the same basic rate as all those who work normal day shifts. Thus a woman who works days cannot claim equality with a man on higher basic rate for working nights if in fact there are women working nights on that rate too, and the applicant herself would be entitled to that rate if she changed shifts. (See I.T. Smith and J.C. Wood : Industrial Law, 2nd Edition, (Butterworths) page 308). We do not suggest that there can be no discrimination at all between men and women in the matter of remuneration. There are some kinds of work which women may not be able to undertake. Men do work like loading, unloading, carrying and lifting heavier things which women cannot do. In such cases there cannot be any discrimination on the ground of sex. Discrimination arises only where men and women doing the same or similar kind of work are paid differently. Wherever sex discrimination is alleged, there should be a proper job evaluation before any further enquiry is made. If the two jobs in an establishment are accorded an equal value by the application of those criteria which are themselves non-discriminatory (i.e. those criteria which look directly to the nature and extent of the demands made by the job) as distinct from criteria which set out different values for men and women on the same demand and it is found that a man and a woman employed on these two jobs are paid differently, then sex discrimination clearly arises. (See Paul Davis and Mark Freedland : Labour Law, Text and Material (1979) page 297)."

38. Learned counsel further referred to the provisions of Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970, which casts the statutory duty of principal employer to make payment of wages to the workers. Section 21(4) of the said Act is quoted below:

214

"21. Responsibility for payment of wages-
(1) xxxx xxxx xxxx
(2) xxxx xxxx xxxx
(3) xxxx xxxx xxxx
(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

In support of this, learned counsel placed reliance upon the judgments of the Apex Court in the cases of ***Haryana Financial Corporation and another vs. Jagdamba Oil Mills and another (2002) 3 SCC 496, Paras 19,20 and 22, Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. (2003) 2 SCC 111, Para 59.***

39. It is also pertinent to consider the relevant provisions of Contract Labour (Regulation and Abolition) Central Rules, 1971.

40. Rule 75 and 78 of the Rules are relevant and quoted below :

"75. Register of persons employed- Every contractor shall maintain in respect of each registered establishment where he employs contract labour a register in Form XIII.

78. Muster Roll, Wages Registers, Deduction Register and Overtime Register- (1) (a) Every contractor shall in respect of each work on which he engaged contract labour,-
(i) maintain a Muster Roll and a Register of Wages in Form XVI and Form XVII respectively;
Provided that a combined Register of Wage-cum-Muster Roll in Form XVII shall be maintained by the contractor where the wage period is a Fortnight or less;
(ii) maintain a Register of Deduction for damages or loss, Register or Fines and Register of Advances in Form XX, Form XXI and Form XXII respectively;

(315)

(iii) maintain a Register of Overtime in Form XXIII recording, therein the number of hours of, and wages paid for, overtime work, if any;
(b) Every contractor shall, where the wage period is one week or more, issue wage slips in Form XIX, to the workmen at least a day prior to the disbursement of wages;
(c) Every contractor shall obtain the signature or thumb impression of the worker concerned against the entries relating to him on the Register of Wages or Muster Roll-cum-Wages Register, as the case may be, and the entries shall be authenticated by the initials of the contractor or his authorised representative and shall also be duly certified by the authorised representative of the principal employer in the manner provided in rule 73.

(d) In respect of establishments which are governed by the Payment of Wages Act, 1936 (4 of 1936) and the rules made thereunder, or Minimum Wages Act, 1948 (11 of 1948) or the rules made thereunder, the following registers and records required to be maintained by a contractor as employer under those Acts and the rules made thereunder shall be deemed to be register and records to be maintained by the contractor under these rules, namely:-

(a) Muster Roll;
(b) Register of Wages;
(c) Register of Deductions;
(d) Register of Overtime;
(e) Register of Fines;
(f) Register of Advances;
(g) Wage slip.

(2) Notwithstanding anything contained in these rules, where a combined or alternative form is sought to be used by the contractor to avoid duplication of work for compliance with the provisions of any other Act or the rules framed thereunder or any other laws or regulations or in cases where mechanized pay rolls are introduced for better administration, alternative suitable form or forms in lieu of any of the forms prescribed under these rules, may be used with the previous approval of the Regional Labour Commission and Central."

41. Learned Counsel for the Union, submitted that none of these registers were produced before the Chief Labour Commissioner nor before the Arbitrator. It is further submitted that because of non-

production of the registers, adverse inference is to be drawn as per the judgments of the Apex Court in the cases of ***Hiralal and Others Vs. Badkulal and Others*** reported in ***AIR 1953 SC 225 (Para 4)*** and ***Bharat Heavy Electricals Ltd. Vs. State of U.P. and Others*** reported in ***(2003) 6 SCC 528 (Para 13).*** Para 13 of the judgment in **Bharat Heavy Electricals Ltd**. (supra) reads as under:

> *"13. This apart, the finding that the respondent workmen were the employees of the appellant, does not rest merely on the test of control. The other evidence and facts and circumstances of the case were also kept in mind in recording such a finding including a vital fact that the appellant did not produce the records alleging that they were not available which led to drawing adverse inference against them. It is not possible for us to hold that such concurrent findings recorded by the Labour Court and the High Court that the workmen were to be treated as the employees of the appellant are either perverse or based on no evidence or untenable at all."*

42. Another argument, which has been advanced, is with regard to the pendency of the reference before the C.G.I.T.-cum-Labour Court. It is contended that so far as that reference is concerned, it is mainly with regard to the regularization of the workers under the I.D. Act and the award and the writ petition is with regard to the payment to the workers on performing same and similar kind of job at par with the employees of principal employer. It is further contended that both are under different forum and under different enactment. It is also contended that it is well settled law that two parallel proceedings under different statutes can be continued. Reliance is placed upon the judgment of the Gujarat High Court in the case of ***Gujarat Mazdoor Panchayat vs. State of Gujarat***

(217)

and others reported in ***1992(II) LLJ 486,Paras 29 and 30***. It is submitted that under Sections 10 and 12 of the Industrial Disputes Act, 1947 and Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, the Gujarat High Court has held that parallel proceedings can be held under both the enactments. In this connection, learned counsel referred to the Aims and Object of Contract Labour (Regulation and Abolition) Act, 1970. It is contended that it is a beneficiary legislation as held by the Hon. Supreme Court in the case of ***G.B. Pant University of Agriculture & Technology, Pantnagar, Nainital vs. State of U.P. and others*** reported in ***2000(7) SCC 109***. Learned counsel referred to para 10 of the judgment, which reads as under:

> *"10. Admittedly, cafeteria employees need succor for livelihood- would they continue to remain half-fed and half-clad as long as they live- is this the society that we feel proud of? Is this the guarantee provided by the founding fathers of our Constitution or it this the concept of socialism, which they conceived? None of the answers can possibly be in the affirmative. The situation is rather awesome and deplorable-the University by compulsion directs students to be residents of the hostel with a definite ban on having food from outside agencies excepting under special circumstances and the provider of food, namely, the staff of the cafeteria ought not to be treated as an employee of the University- whose employees are they if we may ask and we think it would not be impertinent on our part to ask the same- is it the consumer of food? Since when the consumer of food becomes the employer? These are the questions which remain unanswered. The society shall have to thrive. The society shall have to prosper and this prosperity can only come in the event of there being a wider vision for total social good and benefit. It is not bestowing any favour on anybody but it is a mandatory obligation to see that the society thrives. The deprivation of the weaker section we had for long but time has now come to cry a halt and it is for the law courts to rise up to the occasion and grant relief*

(218)

to a seeker of a just cause and just grievance. Economic justice is not mere legal jargon but in the new millennium, it is the obligation for all to confer this economic justice on a seeker. Society is to remain, social justice is the order and economic justice is the rule of the day. A narrow pedantic approach to statutory documents no longer survives. The principle of corporate jurisprudence is now being imbibed on to industrial jurisprudence and there is a long catena of cases in regard thereto-the law thus is not in a state of fluidity since the situation is more or less settled. As regards interpretation, widest possible amplitude shall have to be offered in the matter of interpretation of statutory documents under industrial jurisprudence. The draconian concept is no longer available. Justice-social and economic, as noticed above ought to be made available with utmost expedition so that the socialistic pattern of the society as dreamt of by the founding fathers can thrive and have its foundation so that the future generations do not live in the dark and cry for social and economic justice."

43. It is contended by the learned counsel that the Hon. Supreme Court in its decision in the case of ***Steel Authority of India Ltd. and others vs. National Union Waterfront Workers and others (2001) 7 SCC 1*** has made certain observations with regard to Contract Labour (Regulation and Abolition) Act, 1970. Learned counsel referred to paras 9 and 10 of the said judgment, which read as under:

"9. After the advent of the Constitution of India, the State is under an obligation to improve the lot of the workforce. Articles 23,38,39,43,43-A,14 and 15 are relevant in this regard. The preamble to the Constitution is the lodestar and guides those who find themselves in a grey area while dealing with its provisions. It is now well settled that in interpreting a beneficial legislation enacted to give effect to the Directive Principles of State Policy, which is otherwise constitutionally valid, the consideration of the court cannot be divorced from those objectives. In a case of ambiguity in the language of a beneficial labour legislation, the courts have to resolve the quandary in favour of conferment of, rather than

(219)

denial of, a benefit on the labour by the legislature but without rewriting and/or doing violence to other provisions of the enactment.

10. The CLRA Act was enacted by Parliament to deal with the abuses of the contract labour system. Parliament adopted twin measures to curb the abuses of employment of contract labour-the first is to regulate employment of contract labour suitably and the second is to abolish it in certain circumstances. This approach is clearly discernible from the provisions of the CLRA Act, which came into force on 10/2/1971. A perusal of the statement of Objects and Reasons shows that in respect of such categories as may be notified by the appropriate Government, in the light of the prescribed criteria, the contract labour will be abolished and in respect of the other categories the service conditions of the contract labour will be regulated."

44. Learned counsel submits that the reopening of the case practically after seventeen years dragging the parties to have litigation afresh is something, which may result to even denial and it is impossible. He further submits that out of 150 or so workers, 7 have died, even the Arbitrator has died. He also submits that other status of the workers have also been closed after withdrawal of the application by the Union on the assurance given by the contractors and management that the award of the Arbitrator will be final and binding on the parties. It is submitted that 17 years have passed. It is further submitted that there is no infirmity with regard to the entitlement of the wages to the workers. It is also submitted that Central Coalfields Limited, a subsidiary of Coal India Limited, had entered into an agreement with M/s Black Diamond Carriers Pvt. Ltd., the copy of agreement is filed as Annexure-P/14 in W.P. No.2626/96. It is contended that it is clear from the said contract vide clause No.40(G) that the contractor

(220)

workers will be paid wages as per N.C.W.A.-II. It is further contended that the NCWA-II was in operation from 1/1/1979 to 31/12/1982, NCWA-III was in operation from 1/1/1983 to 31/12/1986 and NCWA-IV was in operation from 1/1/1987 to 30/6/1991. It is also contended that the Union has also filed two more similar agreements in W.P. No.2626/96; one agreement was entered between the management of MCL, a subsidiary of Coal India Limited and M/s Garuda Transport Pvt. Ltd., wherein vide clause no.11 it has been clearly mentioned that the workers (drivers and tripman) will be paid wages as per NCWA-IV and second agreement was entered between the management of SECL and M/s Chanakya Transport Pvt. Ltd. wherein it was specifically mentioned that wages and salary to the workers will be paid as per NCWA. It is submitted that Annexure-R/2(7) filed in W.P. No.2626/96 is the copy of the agreement. It is further submitted that the period of operation of contract of M/s Kaytin Transport Pvt. Ltd. was from 1/3/1983 to 29/2/1988 much after the agreement of Black Diamond Carriers Pvt. Ltd. It is also submitted that further the agreement of M/s Garuda Transport Pvt. Ltd. is much after the agreement of the petitioner. It is contended that in both the agreements it was specifically mentioned that the workers are entitled for NCWA wages. It is further contended that the rehabilitation scheme of ex-servicemen has been formulated by the Ministry of Defence on 15th April, 1978 as per the guidelines of the Director General Resettlement and as per the scheme they would undertake coal transportation

operation in the various subsidiaries of Coal India Limited and the agreement will be common to all.

45. Learned counsel referred to Minimum Wages Act, 1948. It is submitted that as per sub-section (i) of Section 2, "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed. It is contended that minimum wages under the Minimum Wages Act cannot be paid to the workers in the present case and they are entitled only to NCWA wages. For this, reference has been made to Clause 39(h) of the agreement of M/s Kaytin Transport Pvt. Ltd., which reads as under:

> *"h. The transport contractor shall, in addition to the above make all payments provided in the relevant law as specially in labour laws including leave pay, railway fare, maternity benefit compensation under Industrial Dispute (Amendment) Act and sick leave wages, wages for paid holidays as per the rules, agreements, awards or relevant laws applicable to coal industry as the case may be."*

46. It is contended that the agreements, awards or relevant laws applicable to coal industry is NCWA and Mines Act, 1952. It is further contended that Section 2 of the Mines Act, 1952 prescribes the definitions. Counsel referred to Section 2(h) (i) and Section 2(2) of the Act, which read as under:

> *"2(h). A person is said to be 'employed' in a mine who works as the Manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the Manager, whether for wages or not –*
>
> *(i) in any mining operation (including the concomitant operations of handling and transport of minerals*

(222)

upto the point of dispatch and of gathering sand and transport thereof the mine).

(2) A person working or employed in or in connection with a mine, is said to be working or employed-

(a) 'below ground' if he is working or employed-

(i) in a shaft which has been or is in the course of being sunk;

(ii) in any excavation which extends below superjacent ground; and
(b) 'above ground' if he is working in an open cast working or in any other manner not specified in clause (a)."

47. Lastly, learned counsel pointed out that so far as SECL is concerned, no prejudice has been caused nor has been shown. If something was required to be performed, it was to be performed by the SECL and the Central Government and the Central Government has not been joined as a party. None of these questions were raised before the Chief Labour Commissioner nor before the Arbitrator. It is submitted that the Union cannot be penalized for their act. It is contended that SECL is a public undertaking; it is their duty as well to apprise and they have failed. It is further contended that if a party fails in his own duty, it cannot blame to other.

48. On perusal of the record, it appears that a reference in the case to Chief Labour Commissioner was made pursuant to the directions given by the Division Bench of the High Court of M.P. in W.P. No.3548/87 decided on 16/11/1987. The Division Bench relied upon the judgment of the Hon. Supreme Court in the case of **BHEL Workers Association** (supra), wherein it is laid down that

(223)

under the Central Labour (Regulation and Abolition) Act, 1970; no invidious distinction can be made against contract labour. Contract labour is entitled to the same wages, holidays, hours of work and conditions of service, as are applicable to workmen directly employed by the principal employer of the establishment on the same or similar kind of work. The Chief Labour Commissioner was therefore directed to enquire into the question raised by the petitioners as to whether the work done by the workmen of the transporters of the same type of work that is being done by the workmen directly employed by the principal employer. The said writ petition was filed by Nathulal Pandey-General Secretary, M.P. Koyla Mazdoor Sabha and others against General Manager-SECL, Personnel Manager-Management of Gevra Project, General Manager-Ex Mily. Enterprises Pvt. Ltd., Kaytin Transport Pvt. Ltd. and Rohini Associates Pvt. Ltd. The said order of the Division Bench was neither challenged by any of the respondents nor they applied for modification or review. Thereafter the case was referred to the Chief Labour Commissioner and the proceedings were started. During the pendency of the matter before the Chief Labour Commissioner; an agreement was arrived at on 24/1/1991 that the matter will be referred to arbitration to Shri R.K. Mehta, General Manager (P&A), SECL, Bilaspur, and the decision shall be binding on all the parties. This has also not been challenged. The parties have acquiesced it. The Arbitrator then proceeded the matter, hearings were held on various dates as has been mentioned above and then ultimately the award was passed

(224)

on 25/8/1994 and it was forwarded to the Regional Labour Commissioner, Madhya Pradesh. During this period, the proceedings before the Chief Labour Commissioner, New Delhi were also commenced and there also the parties agreed for reference to the Arbitrator. At no point of time, any objection was raised. Pursuant to that, all those proceedings, which were filed by the persons, were withdrawn as is reflected in the proceedings. The order of the Division Bench still holds good.

49. In any case, so far as the Union is concerned, they approached the Chief Labour Commissioner, even Chief Labour Commissioner is not a party and the Arbitrator as well as Central Govt. is also not a party in any of the abovesaid petitions. The SECL has just made the poor persons and the Contractors as the party and basically relief is against the Contractors under Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970. So far as SECL is concerned, even it has not claimed any relief. It is submitted that in case the Contractors fail to make payment of wages, then the principal employer shall be liable to make payment of wages and recover the amount so paid from the contractor. It is worthwhile to mention that the interest of the SECL is well protected. The interim orders passed as mentioned hereinabove have taken due care in this regard. It is also to be noted that during the course of hearing offers were made and the parties were given opportunity to settle the matter but that could not materialize.

225

50. So far as W.P. Nos.2526/95 and 2626/96 are concerned, the petitioner/SECL has not joined the Arbitrator as well as Chief Labour Commissioner as parties. These two petitions suffer from non-joinder of parties.

51. During the course of hearing, it was pointedly asked as to what prejudice has been caused to the employer by non-publication. Learned counsel has not been able to point out any prejudice. It is told that the procedure should be strictly followed. So far as non-joining of parties is concerned, learned counsel submits that in view of the nature of the relief claimed, none was required to be impleaded as the party.

52. Shri Ali Asgar, learned counsel for the petitioner in W.P. No.2384/95, submits that prejudice may not be as such but if a thing is required to be done in that manner, it should be done and deviation in that is not allowed. Even on factual aspect the schedule, which have been annexed with the award, there is no counter to that.

53. So far as compliance of the provisions of sub-section (4) of Section 10-A of the Act regarding submission of the award to the appropriate Government is concerned, under the peculiar facts and circumstances as have been discussed above and in view of the provisions of sub-section (4) of Section 10-A of the Industrial Disputes Act which lays down that the award has to be submitted to the appropriate Government, ends of justice would be served if a direction is given for submission of the award to the appropriate Government. In this connection, the law laid down in the case of

(226)

Aligarh Muslim University and others vs. Mansoor Ali Khan reported in ***(2000) 7 SCC 529*** is pertinent, wherein it has been held that non-compliance in every case would not vitiate the action. In view of the above fact, it is a case, which comes within the exception, and if a direction for post submission is given, that would serve the purpose.

51. Let the award now be submitted by the Regional Labour Commissioner, as the Arbitrator is dead, as required under the law before the appropriate Government and after its submission copy of the same may be forwarded to Registrar General of this Court.

55. Subject to what has been stated above, the writ petitions bearing No.2384/85, 2526/95 and 2626/96 stand disposed of.

56. So far as W.P. No.539/02 is concerned, learned counsel for the petitioner in W.P. No.539/02 submits that he may be allowed to withdraw the petition with liberty to file afresh in case an eventuality so arises.

57. Accordingly, W.P. No.539/02 stands disposed of as withdrawn with the liberty as prayed.

58. Before parting this Court appreciates the valuable assistance rendered by the learned counsel for the parties.

Copy of this order be placed in the connected files.

Sd/-
Fakhruddin
Judge
6/12/2004

Hande/-

15.12.04